

AGREEMENT FOR PERMANENT TRANSFER OF ARTWORK

THIS AGREEMENT FOR THE PERMANENT TRANSFER OF ARTWORK (this “Agreement”) is made on the date countersigned by the City Controller between the **CITY OF HOUSTON, TEXAS** (the “City”), a home-rule city of the State of Texas principally situated in Harris County, and **HOUSTON MUSEUM OF AFRICAN AMERICAN CULTURE** (“HMAAC”), a non-profit corporation. City and HMAAC are hereinafter referred to individually as “Party” and jointly as the “Parties.”

ARTICLE 1: RECITALS

- 1.1 The City and HMAAC share mutual goals relating to fostering an environment in the City of Houston in which art and culture flourish for the sharing a benefit of all residents of and visitors to Houston.
- 1.2 HMAAC is dedicated to preserving the richness of Houston’s African American history and promoting the vibrancy of African and African American culture and art forms.
- 1.3 In December 1999, the City of Houston City Council adopted an ordinance establishing the City’s Civic Art Program, which integrates artwork into public spaces and allows for acceptance of artwork into the City Art Collection. One such artwork, *Spirit of Confederacy*, a bronze sculpture depicting an angel holding a sword and palm branch created by Louis Amateis (“Statue”), and dedicated to Sam Houston Park in the City, which is depicted in **Exhibit A**.
- 1.4 In 2017, in response to the active movement to remove monuments and symbols of the Confederacy in the United States and in the wake of the 2015 white supremacist massacre at Emanuel A.M.E. Church in Charleston, South Carolina and the 2017 white nationalist rally in Charlottesville, VA, Mayor Sylvester Turner asked his senior staff members to study whether statues related to the Confederacy and/or subjects with ties to the Civil War or slavery should be removed from City of Houston property. In response to this request, the Mayor’s Office convened and facilitated at Task Force that made recommendations on the handling of specific Confederate Items in the City’s possession, including Statue. After thoughtful consideration, the Task Force recommended that Statue should not be displayed on public property as it was unsuitable for public display due to its subject matter and relationship to the Confederacy and/or ties to the Civil or slavery, but that it should not be destroyed.
- 1.5 In June 2020, the City removed Statue from public display at Sam Houston Park. The City removed Statue after another statue was vandalized. The City determined that HMAAC was uniquely positioned to place the Statue in the proper historical context and educate the public about the artwork rather than the artwork being display publicly on City property where the historical context may be lacking. Thus, in August 2020, the City delivered Statue to HMAAC who has since installed it on HMAAC grounds.
- 1.6 The City and HMAAC are entering into this agreement to formalize the transfer of Statue to HMAAC so that HMAAC may (1) facilitate the maintenance of and prevention of vandalism of Statute, which shall be paid by HMAAC, and (2) display of Statue in such a way as to place the Statue in the proper historical context and educate the public about the artwork.

ARTICLE 2: DUTIES OF THE CITY

- 2.1. The City permanently conveys to HMAAC all right, title, possession of, and interest in and to Statue for the purpose of maintenance and vandalism prevention and display of the Statue in proper historical context for educational purposes.
- 2.2.
- 2.3. In transferring Statue, the City has made no determination of the value of Statue and makes no representations or assurances as to the value of Statue.

ARTICLE 3: DUTIES OF HMAAC

- 3.1. HMAAC accepts Statue "AS-IS," in its present condition for the purpose of maintenance and vandalism prevention and display of the Statue in proper historical context for educational purposes. HMAAC acknowledges that the City has made no statements or representations inconsistent with the transfer of Statue "AS-IS."
- 3.2. HMAAC agrees that it shall only install and display Statue in such a way as to place the Statue in the proper historical context and educate the public about the artwork.
- 3.3. HMAAC acknowledges that loss or damage to Statue beyond normal wear and tear is the responsibility of HMAAC.
- 3.4. HMAAC grants the City an irrevocable license to graphically reproduce an image of the Statue for non-commercial, public purposes. "Non-commercial purposes" mean the reproduction of an image of the Statue in books, slides, photographs, general books and magazines not primarily devoted to art but of an educational, historical or critical nature, slides and films not intended for mass audience, and television from stations operated for educational purposes or on programs for educational or informational purposes from all stations.
- 3.5. In exchange for transfer of ownership of Statue, HMAAC shall work with the Director of Mayor's Office of Cultural Affairs ("MOCA") of his or her designee ("Director") to provide educational opportunities or free to public for the purpose of educating the public about Statue and placing Statue in the proper historical context. for the next twenty years.
- 3.6. **HMAAC AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY. HMAAC HEREBY COVENANTS AND AGREES NOT TO SUE THE CITY FOR ANY CLAIMS, DEMANDS, OR CAUSES OF ACTION DIRECTLY OR INDIRECTLY RELATED TO ITS RELEASE UNDER THIS SECTION. FOR THE AVOIDANCE OF DOUBT, THIS COVENANT NOT TO SUE DOES NOT APPLY TO CLAIMS FOR BREACH OF THIS AGREEMENT.**
- 3.7. HMAAC AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION,

LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) HMAAC'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3, " HMAAC ") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (2) THE CITY'S AND HMAAC'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER HMAAC IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND HMAAC'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER HMAAC IS IMMUNE FROM LIABILITY OR NOT.

HMAAC SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. HMAAC'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

ARTICLE 4: MISCELLANEOUS

- 4.1. *Relationship of the Parties.* City and HMAAC agree that no partnership relationship between the Parties hereto or joint venture is created by this Agreement, and HMAAC is not made the agent or representative of City for any purpose or in any manner whatsoever and that each Party is responsible in accordance with the laws of the State of Texas for its own negligent or wrongful acts or omissions and for those of its officers, agents or employees in conjunction with the performance of services covered under this Agreement, without waiving any governmental immunity available to the Parties under Texas law and without waiving any defenses of the Parties under Texas law. The provisions of this section are solely for the benefit of the Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- 4.2. *No City Expenditure.* Nothing in this Agreement shall be construed to require that City make any expenditure of City funds to HMAAC or to any other party.
- 4.3. *Severability.* If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.
- 4.4. *Entire Agreement.* Upon execution of this Agreement by both Parties, this Agreement shall constitute the entire agreement between the Parties for the transfer of ownership of Statue.
- 4.5. *Written Amendment.* Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City and HMAAC. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.
- 4.6. *Governing Law and Venue.* This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for

any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

- 4.7. *Notices.* All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out below or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

<u>City of Houston</u>	<u>Houston Museum of African American Culture</u>
Director, Mayor's Office of Cultural Affairs 901 Bagby Street Houston, Texas 77002	Davinia Reed Chief Operating Officer 4807 Caroline St. Houston, Texas 77004

- 4.8. *Publicity.* HMAAC shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

{SIGNATURES FOLLOW}

SIGNATURES

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

HOUSTON MUSEUM OF AFRICAN AMERICAN CULTURE

DocuSigned by:
By: DAVINIA REED
Name: DAVINIA REED
Title: Chief Operating Officer

DS



ATTEST/SEAL:

DocuSigned by:
Pat Jefferson-Daniel
2E30AB368C0B4B1
City Secretary

CITY OF HOUSTON, TEXAS

Signed by:

DocuSigned by:
[Signature]
DS
Mayor
DocuSigned by:
Manalette Hunter
E2DA8C2147D14F3...

APPROVED:

DocuSigned by:
Debra Lathan
66F0FCBDA65454...
Director, Parks & Recreation Department

COUNTERSIGNED BY:

DocuSigned by:
[Signature]
DS
City Controller
DocuSigned by:
Shannan Nobles
EE830DF920AE40E...

APPROVED AS TO FORM:

DocuSigned by:
Rachel Brier
66495B7A261241A...
Senior Assistant City Attorney II
L.D. File No. LD-CON-0000000468

DATE COUNTERSIGNED:

4/10/2023

EXHIBIT A

DEPICTION OF *SPIRIT OF CONFEDERACY* STATUE



Title: *Spirit of The Confederacy*

Artist: Louis Amateis

Date: 1908

Type: Statue

Medium: Bronze

Location: Sam Houston Park

Dimensions: 12' height x 5' wide x 5.6' deep
(base: 4' height x 6' wide x 6' deep)

Photo credit: Barbara Estrada

